IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE M.NARAYANA REDDY

WRIT PETITION NO : 17024 of 2004

Between:

Vemana Charcha Vedika rep.by its Convener, Malladi Kanada Sundaram S/o.Venkateswarlu, R/o.5-9-1, Mahatma Gandhi Road, Sattenapalli, Guntur Dist.

..... PETITIONER

AND

1 The Govt. of State of A.P. rep.by its Chief Secretary, Secretariat

Buildings, Hyderabad.
2 The Principal Secretary, Revenue, Govt. of A.P., Secretariat Building,

Hyderabad.
3 The Commissioner, Land Reforms, Urban Land Ceiling, Station Road,

Nampally, Hyderabad.
4 The Special Officer and Competent Authority, Urban Land Ceiling,

Govt. of A.P. Vijayawada.
5 The Secretary, Industries & Commerce, Govt. of A.P., Secretariat

Building, Hyderabad.
6 M/s.Andhra Cements Company Ltd., having its Corp. office at 111,

Sarojini Devi Road, Secunderabad rep. by its Managing Director, R/o

111, Sarojini Devi Road, Chandralok Complex, Secunderabad - 3.
7 M/s.Durga Estates, Lotus Land Mark, C.K.Reddy Road, Ayodhya

Nagar, Vijayawada.
8 M/s.Industrial Development Bank of India rep.by its Chairman-cum-

Managing Director.having its office at Nariman point, Mumbai.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more particularly one in the nature of writ of Mandamus declaring the action of the 1st Respondent State and its departments in permitting the 6th respondent company to sell the lands covered under the Urban Land (Ceiling & Regulation) Act, 1976 through G.O.Ms.No.786 dated 26-10-2002 and all consequential further proceedings as illegal, arbitrary and unconstitutional, void and against the public interest.

Counsel for the Petitioner: MR.B.CHINNAPA REDDY

Counsel for the Respondent No.1 to 5: GP FOR ASSIGNMENT

Counsel for the Respondent No.6: Mr.S.Ravi

Counsel for the Respondent No.7: Mr.Ch.Ramesh Babu

The Court made the following :

ORAL ORDER: (per the Hon'ble the Chief Justice)

This petition has been filed as Public Interest Litigation under Article 226 of the Constitution of India. Petitioner is described as Vemana Charcha Vedika, alleged to be an organization running for the benefit of general public and espousing their cause. Malladi Kanaka Sundaram claims to be the Convenor of this organisation and is a retired part-time Village Assistant. Writ Petition questions G.O.Ms.No.786 dated 26-10-2002 issued by the first respondent granting exemption under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act") permitting the sixth respondent to sell the urban land to an extent of 2,30,300 sq. metres after considering G.O.Ms.No.724 dated 18-7-1994.

Petitioner alleged that the members of the petitioner organization went through the advertisement inserted in Eenadu Telugu Daily newspaper dated 19-9-2004 and came to know about G.O.Ms.No.786 dated 26-10-2002 and thereafter made enquiries and were shocked to learn that in a casual manner, by misinterpreting the orders of the High Court and without considering the public interest and without considering the spirit of law laid down by the Supreme Court, Government had permitted the respondent No.6 to sell prime land. Thus, in nutshell, petitioner questions the legality and validity of G.O.Ms.No.786 dated 26-10-2002 after narrating certain history of the events before issuance of G.O.Ms.No.786 that how the respondent No.6-company was proceeded against by the respondents and

how the company is involved before the BIFR as a sick industrial company in Case No.33 of 1990. After giving vivid and elaborate details of various litigations in which respondent No.6 was involved with meticulous details, particulars and case numbers, the petitioner alleged that G.O.Ms.No.786 was issued by the respondent No.1 permitting sale of land covered under the Act. The G.O. was silent and was devoid of any reasons and circumstances why exemption was granted to the respondent No.6. Petitioner alleged that respondent No.6 was not entitled to any exemption to sell the land since the management of the respondent No.6 company had assumed the management of a sick company undertaking all the existing liabilities under the previous management and under the guise of rehabilitation of the sick industry as per the BIFR scheme, the sixth respondent company is not entitled to sell the entire land for profiteering. The action of the respondent No.1 in issuing the G.O., is neither in larger public interest nor in the interest of financial institutions or interest of Government departments or of the employees. Petitioner made serious allegations that sixth respondent company and its management should not be permitted to enjoy the benefit under the G.O. The Director of the Company has appeared before the court while prosecuting W.P.No.15605 of 1994 and he deposed falsely and liable for prosecution and perjury. The officials of the first respondent who are at the helm of affairs had mis-interpreted the orders of the court in favour of the sixth respondent-company under the guise of public interest and were liable to be appropriately punished. In this background, the petitioner prayed quashing of G.O.Ms.No.786 dated 26-10-2002 and all consequential proceedings and also prayed for interim order against creation of third party interest.

Needless to add that petitioner filed this writ petition on the very next day of coming to know from the newspaper about the sale of the property. It was instituted on 20th September, 2004 and appended to the petition are copy of G.O.Ms.No.724 and 786 as also pleadings of the earlier two writ petition Nos.15605/94 and 2204 of 1999 filed by the respondent No.6 company in which the petitioner was not a party and has nothing to do with the said proceedings. Petitioner has not disclosed as to what public utility work the petitioner organization was doing and whether or not on earlier occasion the petitioner had espoused the cause of public by filing some petitions and what interest the petitioner has got either in the company or the company's affairs.

Petition has been opposed by the respondents, who filed their respective

replies. Respondents 1 to 5 filed their reply on the affidavit of N.S.Hariharan, Special Chief Secretary to Government, Revenue (UC.III) Department, Secretariat stating that Government after careful consideration of the request of the sixth respondent-company has granted exemption vide G.O.Ms.No.1448 Revenue dated 5-11-1977 for the purpose of manufacturing Portland cement subject to the condition that the said land should be utilized for the purpose of the said industry. The Special Officer and Competent Authority, Urban Land Ceiling, Vijayawada, on 9th October, 1990 addressed a letter to the Government complaining violation of conditions by the sixth respondent-company and requested the Government to withdraw the exemption. Government has passed orders vide G.O.Ms.No.724 dated 18th July, 1994 withdrawing the exemption granted earlier. This led to the sixth respondent filing W.P.No.15605 of 1994, which was allowed by the High Court on 17-8-1999. G.O.Ms.No.724 was quashed and the court further held that the order does not preclude the Government from reviewing the situation and taking a decision in case exempted land is being used for purposes other than that for which it was exempted. Affidavit thereafter refers to subsequent events of calling for report from the Special Officer and facts leading to filing of W.P.No.2204 of 1999. Affidavit also states that the sixth respondent company submitted an application to the Government seeking permission to sell the unproductive land so as to bring the company into profit as per the decision of the AAIFR dated 16th April, 2002. Government after detailed consideration of the facts and circumstances and taking into consideration the rehabilitation of the industry in the larger public interest and also settling the dues of financial institutions and liabilities of sales tax to government decided to permit the company to sell the exempted land subject to the conditions that the first charge on the sale proceeds shall be the dues of the Commercial Tax Department amounting to Rs.10.57 crores and the management shall make payment of the said dues of the Commercial Tax department towards deferment of sales tax upto 2003 as already agreed by the company and the remaining proceeds shall be utilized for the rehabilitation of the industry as per the AAIFR scheme and settling the dues of other financial institutions. Affidavit in reply further states that the principles laid down by the Supreme Court in T.R.THANDUR vs UNION OF INDIA [AIR 1996 SC 1643] were duly taken into consideration. Affidavit also says that writ petition is not a genuine public interest litigation and does not deserve to be entertained as such.

Affidavits in reply of the sixth and seventh respondents are also on similar

lines, who also question the locus standi and bona fides of the petitioner in filing the petition. Respondent No.6 has given further details of the proceedings before the BIFR and AAIFR and facts leading to its approaching the respondent No.1 seeking permission to sell the land. It is stated that the impugned G.O., was issued by the first respondent in exercise of its power vested under the law in public interest so as to enable the respondent No.6 to revive and pay and settle dues to financial institutions, Banks, State and Central Government, various statutory bodies and to rehabilitate the mother plant at Dachepally, Guntur District.

The Supreme Court in T.R.Thandur's case (supra) held that under clause (b) of Sub-Section (1) of Section 20 of the Act, the power of the State Government to grant exemption depends upon its satisfaction that the application of the provisions of Chapter III would cause undue hardship to such person. It is obvious that the hardship must be direct consequence of the application of the provisions of Chapter III, which provides for restriction on entitlement to hold any vacant land in excess of ceiling limit prescribed and further prohibits transfer of the excess vacant land, which vests in the State Government in the manner provided in Section 10 and the owner is entitled only to the amount specified in Section 11 of the Act. Undue hardship caused to the owner must be the direct consequence of the provisions contained in Chapter III of the Act, which disentitles the owner to hold any vacant land in excess of the prescribed ceiling limit. The Supreme Court further held:

> "It is also clear that the expression "undue hardship" indicates that the extent of hardship must be 'undue' and not merely any hardship which is bound to result from the application of the provisions of Chapter III of the Act. The direct consequence of the application of the provisions of Chapter III is economic in nature because of the compulsory acquisition of the excess vacant land in lieu of the amount payable under Section 11, apart from deprivation of the benefit of the use of the acquired land. In such a situation, even though mere economic loss could not be intended to fall within the expression "undue hardship", yet the expression cannot be construed to exclude every adverse economic impact even if it be so great on that person as to amount to "undue hardship" to him. This would, however, be a question of fact in each case and unless the impact of economic hardship caused to the owner is so great as to amount to "undue

> hardship" resulting from the application of the provisions of Chapter III of the Act, it would not fall within the ambit of clause (b). It appears that the enactment of the proviso in clause (b) is to emphasise the requirement that there must be strong reasons recorded in writing to justify the satisfaction of the State Government that the hardship caused by the application of the provisions of Chapter III to such person amounts to "undue hardship" so that the grant of exemption is judicious and in case of a challenge, can be judicially tested. Suppose the owner has to repay bona fide outstanding dues under earlier decrees of competent courts and admittedly he has no other means of satisfying those decrees out of the amount payable under Section 11. It may be possible to grant exemption under clause (b) on the ground of undue hardship to enable him to satisfy the decrees. This is only illustrative. In cases of exemption granted under clause (b), the possible misuse of the exemption can be checked by imposition of suitable conditions attached to the exemption and the State government's power under sub-section (2) to withdraw the exemption in case of breach of any condition is a further safeguard in this behalf."

The aforesaid decision of the Supreme Court thus takes note of the fact that "undue hardship" would be a question of fact in each case and unless the impact of economic hardship caused to the owner is so great as to amount to "undue hardship" resulting from the application of the provisions of Chapter III, it would not fall within the ambit of Clause (b). There must be strict reasons recorded in writing to justify the satisfaction of the State Government.

The State Government recorded in the G.O., itself about the hardship to be caused to the respondent No.6 because of applicability of the provisions of Chapter III. The same has been reiterated in the affidavit in reply filed on behalf of respondents 1 to 5 and with such decision taken by the State Government in exercise of its jurisdiction, there would be hardly any ground to interfere in this petition filed as public interest litigation, which, in our view, is not a bona fide and genuine public interest litigation for more than one reason.

We may place on record that the counsel who has filed this public interest litigation had also appeared for the Andhra Cement Workers' Union and the said

Union had also questioned the legality and validity of the G.O. Ms.No.786 in a separate writ petition, which was dismissed by this court, a fact which must be taken into account. Moreover, how the petitioner learnt about the facts as disclosed in the writ petition or how it filed photocopies of the litigation in which respondent No.6 is involved is a mystery and not disclosed in the writ petition. The activities of the petitioner are also not disclosed. A reading of the entire allegations in the petition would suggest that it is an adversarial litigation brought about before the court merely to benefit one section of the workers who had been in litigation with the sixth respondent-company and we may refer to the proceedings with which the Union was involved: one is W.P.No.5834 of 2003 and W.A.No.837 of 2003. Earlier, there were three other writ petitions – W.P.Nos.18829 of 2004, W.P.No.22820 of 2004 and 17519 of 2004. All these proceedings were initiated to stall the sale of the property for which exemption was granted. We are informed by the learned counsel for the respondent No.6-company that the property has since been sold, government dues have been cleared and possession has also been delivered to the purchaser. In these circumstances, we hold that the petition has not been filed for the benefit of public and cannot be treated as Public Interest Litigation. It is not a bona fide litigation. We dismiss the same with costs quantified at Rs.10,000/- to be deposited with the A.P. State Legal Services Authority, Hyderabad within four weeks from today.

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DEVINDER GUPTA, CJ

2-2-2005

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M.NARAYANA REDDY, J

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To

1 The Chief Secretary, Govt. of State of A.P., Secretariat

Buildings, Hyderabad.

2 The Principal Secretary, Revenue, Govt. of A.P., Secretariat Building,

Hyderabad.
3 The Commissioner, Land Reforms, Urban Land Ceiling, Station Road,

Nampally, Hyderabad.
4 The Special Officer and Competent Authority, Urban Land Ceiling,

Govt. of A.P. Vijayawada.
5 The Secretary, Industries & Commerce, Govt. of A.P., Secretariat

Building, Hyderabad.
6 The Chairman cum Managing Director, Industrial Development Bank

of India, Nariman point, Mumbai.

7 2 CCs to the Govt. Pleader for Assignments, High Court Buildings,

Hyderabad (OUT).

8 2 CD copies.